

SENATE BILL 3878

By Jackson

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 7, relative to the electronic recording of certain custodial interrogations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 7, is amended by adding the following as a new part::

Section 40-7-301. It is the intention of the general assembly by enacting this part to reduce the risk of false confessions, to improve the administration of justice, to protect law enforcement from false or fabricated claims of abuse or coercion, and to improve the relationship between law enforcement officers and the communities they serve.

Section 40-7-302. As used in this part, unless the context otherwise requires:

(1) "Custodial interrogation" means any interrogation during which:

(a) A reasonable person in the subject's position would consider himself or herself to be in custody; and

(b) Words or actions are used that are reasonably likely to elicit an incriminating response;

(2) "Electronic recording" includes digital recording, videotape recording or any other method that accurately documents the interrogation being recorded;

(3) "Place of detention" means:

(a) A building or a police station that is a place of operation for a municipal police department or county sheriff department or other law enforcement agency at which building or station persons are or may be held in detention in connection with criminal charges against such persons; or

(b) Any location the accused is actually prohibited from leaving or understands to be prohibited from leaving until such permission is granted by a law enforcement officer; and

(4) "Statement" includes any oral statement, written statement, sign language statement, or other nonverbal statement intended as an assertion.

Section 40-7-303.

(a)

All custodial interrogations of an accused at a place of detention shall be electronically recorded and such recording shall be preserved by the interrogating law enforcement agency as provided in subsection (b).

(b)

(1) Every electronic recording required under this section must be preserved until such time as the defendant's conviction for any offense relating to the statement is final and all direct and habeas corpus appeals are exhausted, or the prosecution of such offense is barred by law.

(2) Electronic recordings shall be catalogued and maintained by each county in a central location in such county.

(3) Any electronic recording of a statement made by an accused during a custodial interrogation that is compiled by a law enforcement agency as required by this section for the purpose of fulfilling the requirements of this section shall be confidential and exempt from public inspection and copying, as provided under section 7 of the Freedom of Information Act and under the provisions of title 10, chapter 7, and the information shall not be transmitted to anyone except as needed to comply with this section or at the accused's request.

(c) The fact that a defendant is subjected to a custodial interrogation in a place of detention and the interrogation is not electronically recorded as required by this section, shall not, in itself, make any statement made by the defendant during or following that non-recorded custodial interrogation inadmissible in any criminal proceeding against the defendant.

Section 40-7-304. This act shall not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

Section 40-7-305. The provisions of this act are declared to be remedial in nature and all provisions of this act shall be liberally construed to effectuate its purpose.

SECTION 3. This act shall take effect September 1, 2008, the public welfare requiring it.